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## I.

## BRIEF STATEMENT OF THE CASE

Since this case was decided on demurrer in the lower Court, the issue involved is purely one of the construction of the law and Constitution. For a full statement of the nature of the case the Court is referred to Notice of Motion (TR. 8-12). Briefly, the facts are that your petitioner was formerly a patient at Blue Ridge Sanitarium, an institution conducted by the Commonwealth of Virginia. That while there he was subjected to most inhuman treatment, culminating with an assault and battery upon him, and his ejection from this state institution.

Thereafter your petitioner brought suit against Blue Ridge Sanitarium and the Commonwealth of Virginia, alleging several distinct tortious acts, some being malicious *per se*, and others revealing such gross negligence as to constitute malice at law. When this suit was brought the Commonwealth of Virginia filed a demurrer setting up the immunity of the state from suit, and the case was argued and decided on this basis. The Honorable Judge of the Circuit Court of the City of Richmond, the Court having jurisdiction in such matters, sustained the demurrer, and thereupon your petitioner sought to obtain a writ of error from the Supreme Court of Appeals of Virginia. This petition for writ of error was denied on September 7, 1942.

## II.

## QUESTIONS PRESENTED

There are only two questions presented for determination by the present Court:

1. Does this Court have jurisdiction to review?
2. Is the doctrine of state immunity correct at law or otherwise?

## III.

## THE BASIS UPON WHICH IT IS CONTEINDED THIS COURT HAS JURISDICTION

It is respectfully submitted that under Title 28, section 344(b), Judicial Code, Section 237, Amended, this Court has jurisdiction of this petition for certiorari, such petition being one to review a final judgment and decree by the Supreme Court of Appeals of Virginia, the highest court of that state in which a decision could be had, which judgment and decree dismissed a petition for writ of error in which petitioner specially set up and claimed, under the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States, his right to bring suit and obtain judgment against the Blue Ridge Sanitarium and the Commonwealth of Virginia for torts, malicious in nature.

In this connection it is respectfully submitted to this Honorable Court that it is well settled that the rights

set up in the Fourteenth Amendment, and the prohibitions applying to the states, relate to civil as well as criminal proceedings (*Riverside Cotton Mills v. Mene-fee*, 237 U. S. 189, 35 S. Ct. 579; *Iowa Central RR. Co. v. Iowa*, 160 U. S. 389, 16 S. Ct. 344; *Campbell v. Holt*, 115 U. S. 620, 6 S. Ct. 209; *Hurtado v. Cal.*, 110 U. S. 516, 4 S. Ct. 292). There is no dispute as to the fact that the rights of the petitioner under the Fourteenth Amendment were set forth in the lower Court (TR ..... 12.....), and also in petition to Supreme Court of Appeals of Virginia for writ of error (TR ..... 2.....). There can, therefore, be no question of the jurisdiction of this Court.

#### IV.

#### IS THE DOCTRINE OF STATE IMMUNITY CORRECT AT LAW?

In the first place it must be earnestly urged upon this Court that this is a national matter, which can only be adequately and properly decided by this Court. In order not to clutter the record, petitioner refers this Court to petition for writ of error (TR. 1 - 6.....), for reasons assailing the validity of this outworn medieval doctrine.

Suffice it to say that despite its own admirable dicta in the Case of *Hoggard v. The City of Richmond* (172 Va. 145), the Supreme Court of Appeals of Virginia in the instant case apparently returned to the outworn dogma. Certainly, as set forth in petition, this

deprives your petitioner of due process of law and of equal protection. The importance of the instant case cannot be minimized. A decision in favor of your petitioner would not only be in accordance with more enlightened conception of law, but would also serve as a very salutary check upon the agents of the state. At this time when the Nazi conception of the state is regarded with abhorrence, it certainly seems necessary for us to set our own house in order.

Petitioner respectfully submits that the monstrous doctrine that the state, a creature of the citizens, should be allowed to maliciously and wantonly inflict damage upon one of its creatures, and then seek immunity under a medieval doctrine, should be repudiated. In any event, petitioner respectfully submits that the question is of sufficient importance to admit of further presentation of argument before this Honorable Court, so that such an important issue may be finally and properly decided.

## V.

### CONCLUSION

Wherefore, it is respectfully submitted that petitioner in this cause comes properly within the jurisdiction of this court in said instant cause; and that there should issue petition for writ of certiorari directed to the Supreme Court of Appeals of Virginia, and that your petitioner, by counsel, may have oral argument hereon,

for which your petitioner herewith prays and will ever  
pray, etc.

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**END OF  
A CASE**